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FISCAL IMPACT STATEMENT

LS 6974

BILL NUMBER: SB 245

NOTE PREPARED: Jan 24, 2006

BILL AMENDED: Jan 23, 2006

SUBJECT: Telecommunications.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR: Rep. Koch

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill specifies that a person that transmits communications through Internet Protocol-enabled services is not a public utility.

The bill prohibits the IURC from exercising jurisdiction over: (1) advanced and broadband services; and (2) information services. The bill also prohibits, after March 27, 2006, the IURC from exercising jurisdiction over nonbasic telecommunications service.

This bill specifies that "basic telecommunications service" does not include functionally equivalent service provided by a person that transmits communications through Internet Protocol-enabled services.

This bill provides that during the period beginning March 28, 2006, and ending June 30, 2009, a provider may increase the flat monthly rate for basic telecommunications service: (1) not more than once; and (2) by not more than \$1; every 12 months. The bill also provides that not later than 18 months after a provider's first rate increase in a local exchange area, the provider must offer broadband service to at least 50% of households in the local exchange area. This bill requires an incumbent local exchange carrier (ILEC) to continue to offer a flat monthly rate for unlimited local calling in exchange areas in which the provider offers basic telecommunications service on March 27, 2006. It provides that after June 30, 2009, a provider that offers basic telecommunications service in Indiana: (1) must offer a flat monthly rate for unlimited local calling in each exchange area in which the provider offers basic telecommunications service; and (2) may not offer any service plan that includes measured local service.

The bill prohibits, after June 30, 2009, the IURC from exercising jurisdiction over basic telecommunications

service. The bill also makes conforming changes to the laws concerning rural telephone cooperatives. This bill prohibits the IURC from exceeding the authority delegated to it under federal law with respect to: (1) interconnection; (2) the resale of telecommunications service; and (3) unbundled network elements. It requires the IURC to biennially identify and eliminate obsolete telecommunications regulations. This bill preserves the IURC's duties with respect to: (1) dual-party relay services; (2) the 211 dialing code; (3) slamming and cramming laws; (4) universal service; (5) certificates of territorial authority; (6) mediating or arbitrating disputes between providers; (7) interconnection agreements; and (8) rates charged by an ILEC to a pay phone service provider. The bill also allows the IURC to require communications service providers to report annually, or more frequently at the option of the provider, information on: (1) service quality and performance; (2) the provider's dark fiber in Indiana; and (3) the types of communications service offered by the provider and the areas in Indiana in which those services are offered.

The bill allows the IURC to revoke a certificate of territorial authority issued to a communications service provider if the provider fails or refuses to comply with the reporting requirements. It provides that on July 1, 2009, certain consumer protection duties of the IURC are transferred to the Office of Utility Consumer Counselor.

This bill provides that after June 30, 2009, communications service providers are not subject to the Public Utility Fee.

The bill also allows a provider of last resort to meet its obligations using any available technology. The bill after June 30, 2009, requires a communications service provider to obtain a certificate of territorial authority from the IURC before offering communications service in Indiana. This bill requires the IURC to issue a certificate not later than 30 days after receiving a complete and accurate application from a provider. The bill provides that the IURC may not require a provider to file a tariff as a condition of receiving a certificate. The bill allows the IURC to condition the issuance of a certificate on a provider's agreement to provide advance notice to customers of changes in rates or services. The bill also provides that a certificate of public convenience and necessity issued to an REMC may serve as a certificate of territorial authority for communications service provided by the REMC, subject to the IURC's right to require the REMC to provide certain information about the communications services provided.

This bill prohibits a communications service provider from entering into an agreement after March 27, 2006, that requires any person to restrict or limit the ability of another provider to obtain: (1) easements or rights-of-way; or (2) access to real property.

The bill provides that the IURC may not require a provider to provide communications service to occupants of multitenant real estate if the owner, operator, or developer of the property does any of the following to benefit another provider: (1) Permits only one provider to install communications facilities or equipment on the premises. (2) Accepts incentives from a provider in exchange for allowing the provider the exclusive right to provide service to the premises. (3) Collects charges from occupants for communications service. (4) Enters into a prohibited agreement with a provider.

This bill provides that after June 30, 2006, the IURC is the sole franchising authority for the provision of video service in Indiana. The bill also provides that the holder of a state-issued franchise must comply with state and local laws governing the use of rights-of-way.

This bill provides that such laws may not: (1) discriminate against a provider based on the technology used to

deliver service; or (2) allow a video service system owned or operated by a local unit to use rights-of-way on more favorable terms.

The bill prohibits the IURC from requiring a provider to satisfy any build-out requirements. It requires, as a condition of holding or receiving a state franchise, a provider to offer, in each service area included in the franchise, a service tier or package that allows the subscriber to choose the programming channels that comprise the service tier or package.

The bill allows the holder of a local franchise on June 30, 2006, to: (1) continue providing service under the local franchise until the local franchise expires; or (2) terminate the local franchise and apply to the IURC for a state-issued franchise. This bill provides that a provider that terminates a local franchise remains subject to any obligations owed to a private person under the franchise until the time the terminated franchise would ordinarily expire. The bill requires the holder of a state-issued franchise to pay a quarterly franchise fee to each local unit included in the holder's service area. This bill provides that the fee to be paid to a unit equals 5% of the provider's gross revenue from providing video service in the unit.

The bill prescribes requirements concerning public, educational, and governmental channel capacity and financial support. The bill also prohibits a provider from denying access to video service to any group of potential subscribers based on income. This bill prohibits a political subdivision that does not provide communications service on June 30, 2006, from providing communications service, other than broadband service, after June 30, 2006. The bill prohibits a political subdivision from controlling, owning, or operating facilities for providing broadband service unless the political subdivision: (1) conducts an inquiry into the availability of broadband service from other providers in the area; (2) holds a public hearing; and (3) determines the costs and benefits of the proposed facilities. This bill prohibits a political subdivision that provides communications service from requiring a nonsubscriber to pay any of the costs of providing the service.

The bill also after June 30, 2009, allows a political subdivision that provides broadband service to provide content and programming through the same facilities used by the political subdivision to provide broadband service.

This bill requires the IURC to adopt rules to establish the Indiana Lifeline Assistance Program to provide reduced charges for basic telecommunications service for eligible customers. It repeals superseded statutes.

Effective Date: Upon passage; January 1, 2006 (retroactive); July 1, 2006; July 1, 2009.

Explanation of State Expenditures: *IURC:* This bill contains provisions that will add responsibilities to the IURC and others that will remove responsibilities from the IURC. Because the Commission's responsibilities encompass all utility types, it is unknown what proportion of the Commission's spending is related to telecommunications.

The bill also requires the IURC to report to the Regulatory Flexibility Committee on its analysis of various issues concerning the telecommunications industry, including the status of competition in the industry and the availability of various telecommunication services in Indiana. The bill requires the IURC to report to the Committee by November 15, 2007, and may be made in conjunction with its annual report to the Committee. Beginning with the annual report that is due July 1, 2008, the IURC will be required to report to the Committee every even-numbered year thereafter.

Office of the Utility Consumer Counselor: This bill shifts the consumer protection responsibilities, related to telecommunications, of the IURC to the Office of the Utility Consumer Counselor (OUCC) after July 1, 2009. Because one of the main responsibilities of the IURC is to hold hearings for consumer complaints and utility petitions for all utilities, it is unknown what proportion of the IURC's spending is telecommunications-related. The purpose of the OUCC is to represent the consumer in the Commission's hearing, and it is also unknown what proportion of the OUCC's spending is telecommunications-related.

While reducing the administrative burden on the Commission, the OUCC will experience an increase in expenditures related to administering the new responsibilities. These expenses will not occur until FY 2010.

Indiana Lifeline Assistance (ILA) Program: This provision will cause an indeterminable increase in expenditures for the IURC and OUCC. The ILA Program will provide basic telecommunication services at a reduced rate to eligible customers. An eligible customer is defined as a person who: (1) has an income at or below 150% of the federal poverty level; and (2) has a child who receives any of the following:

- (A) Medicaid.
- (B) Food stamps.
- (C) Supplemental Security Income.
- (D) Federal public housing assistance.
- (E) Home energy assistance under a program administered by the Division of Family Resources under IC 12-14-11.
- (F) Assistance under the federal Temporary Assistance to Needy Families (TANF) program (45 CFR 260 et seq.).
- (G) Free lunches under the national school lunch program.

The cost of the program is to be paid out of the budgets of the IURC and OUCC. The cost of this program is indeterminable. The IURC and OUCC will be required to reimburse the providers for the lost revenue associated with providing eligible customers this reduced rate service.

Explanation of State Revenues: *Public Utility Fees:* This bill provides that any provider of any of the following services:

- (1) telecommunication;
- (2) information;
- (3) video;
- (4) broadband;
- (5) advanced services; or
- (6) Internet Protocol-enabled retail services;

is exempt from paying the Public Utility Fee after June 30, 2009. This will decrease revenue to the Public Utility Fund. The exact amount of the decrease is indeterminable.

The Public Utility fees are deposited in the Public Utility Fund. The operating budgets of the IURC and the OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2005, fees from the utilities and fines generated approximately \$11.7 M.

Rates & Charges: Although the Commission will retain its jurisdiction over the provision of dual-party relay

services, 211 services, slamming and cramming laws, interconnection agreements, and rates charged to pay phone service providers, telecommunications carriers providing basic telecommunications will no longer be subject to the Commission's approval for setting rates and charges for service. Such services are subject to the state Sales Tax. Revenues generated by telecommunications carriers' services may increase or decrease subject to fluctuation in the carriers' rates and charges. State Sales Tax revenue is deposited in the following funds: General Fund, Property Tax Replacement Fund, Public Mass Transportation Fund, Industrial Rail Service Fund, and the Commuter Rail Service Fund.

The IURC is to retain jurisdiction over the rates that may be charged by an incumbent local exchange carrier to a pay phone service provider.

Access to Property: The bill allows the IURC to impose a civil penalty of not more than \$500 per violation if a telecommunications provider enters a contract, agreement, or other arrangement that requires a person to restrict or limit the ability of a provider to obtain easements or rights-of-way on property used to provide communications services. Civil penalties are to be deposited in the Communications Service Provider Account.

Territorial Authority: One of the main telecommunications-related responsibilities of the Commission after June 30, 2009, will be to continue issuing territorial authority certificates to telecommunications carriers wishing to provide telecommunications services to customers in Indiana. Currently, a hearing must be held before the certificate may be issued. This provision eliminates this requirement and should further reduce the Commission's administrative burden.

Rate Increase: The bill allows certain telecommunications providers to increase their flat monthly rates by a predetermined amount. If utility rates are increased as a result of the bill, state General Fund revenue from the state's 1.4% Utility Receipts Tax could also increase.

Local Broadband Internet Service: A person may file an action against a political subdivision if affected by the political subdivision allegedly violating the provisions of this bill. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: *Local Broadband Internet Service:* This provision would require a political subdivision to conduct an inquiry into the availability of telecommunication services, hold a hearing, and determine the costs and benefits before deciding to take an interest in providing broadband internet service. Once it has been decided to take an interest in the service, a political subdivision may issue bonds to finance the capital costs of needed facilities. The bonds are to be paid only from revenues generated by the political subdivision from providing the service.

The fiscal impact of this provision is dependent on local action and can vary based on the manner in which a political subdivision chooses to carry out the provisions. This bill will only affect those political subdivisions wishing to take interest in providing broadband internet service after June 30, 2006.

Public Utility Fund: Municipal utilities are not subject to the state's Public Utility Fee.

Explanation of Local Revenues: *Video Service Franchises:* For video service providers who have local franchises, the provider may choose to continue providing the video service until the local franchise expires or

terminate the local franchise to apply for a certificate from the IURC. If a provider chooses to terminate its local franchise, the provider will be required to pay any accrued but unpaid franchise fees still due under the local franchise and will remain subject to the rights, duties, and obligations of the local franchise.

Those providers that receive a certificate from the IURC will be assessed a fee of five percent of the provider's gross revenue received from providing service in a unit to be paid to that unit. Those providers who continue providing video service under their current local franchise will not be required to pay the five percent of gross revenue fee, but rather the fee set in the local franchise agreement. The fiscal impact of these provisions could vary among local units depending on the provisions contained in their current franchise agreements.

Background Information: Some municipalities, in their municipal code, allow for a franchise fee provision to be included in cable franchise agreements. One municipality in Indiana charges a franchise fee of 5% of the operator's gross revenue, less taxes and other fees charged by the unit. Other units allow for the fee to be set in the agreement, but not all units address the agreements in detail.

Local Broadband Internet Service: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

State Agencies Affected: Indiana Utility Regulatory Commission; Attorney General; Department of Local Government Finance.

Local Agencies Affected: Certain political subdivisions, trial courts, city and town courts.

Information Sources: Indiana Utility Regulatory Commission.

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